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SENATE BILL 543

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO POLITICAL SUBDIVISIONS OF THE STATE; ENACTING THE  
INFRASTRUCTURE RENOVATION AND PERFORMANCE GUARANTEE ACT;  
AUTHORIZING THE RENOVATION OF CERTAIN INFRASTRUCTURE OF CERTAIN  
POLITICAL SUBDIVISIONS; AUTHORIZING FINANCING ARRANGEMENTS FOR  
THE RENOVATIONS; PROVIDING FOR CERTAIN PERFORMANCE GUARANTEES;  
RECONCILING CONFLICTING AMENDMENTS TO CERTAIN SECTIONS OF THE  
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 6 of this act may be cited as the "Infrastructure  
Renovation and Performance Guarantee Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) adequate infrastructure, including roads,

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1 pipelines, water and wastewater treatment, electrical  
2 generation and distribution, and telecommunications, is basic  
3 to the health, safety and welfare of all New Mexicans;

4 (2) local authority efforts and resources have  
5 not been sufficient to create and maintain a consistent and  
6 adequate condition level of infrastructure statewide;

7 (3) failure to maintain the infrastructure may  
8 create a drag on the local economy and can encourage population  
9 and corporate flight while discouraging new private investment  
10 or reinvestment; and

11 (4) compliance with governmental accounting  
12 standards board statements numbers 34 and 35 with regard to the  
13 net value of infrastructure assets is of financial benefit to  
14 state and local governmental entities.

15 B. The purpose of the Infrastructure Renovation and  
16 Performance Guarantee Act is to authorize local authorities to  
17 establish nonprofit corporations to purchase deteriorated  
18 eligible civil infrastructure assets from a local authority  
19 when they can be renovated and leased or sold back to the local  
20 authority for the sum of the purchase and renovation costs.

21 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
22 Infrastructure Renovation and Performance Guarantee Act:

23 A. "asset value" means the guaranteed replacement  
24 value of the restored or rehabilitated asset;

25 B. "civil infrastructure assets" means any

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1 infrastructure-fixed assets of local authorities, including  
2 roads, pipelines, water and wastewater treatment systems,  
3 electrical generation and distribution systems, and  
4 telecommunications;

5 C. "eligible infrastructure" means civil  
6 infrastructure assets for which renovation is less costly than  
7 the replacement of the assets;

8 D. "infrastructure development corporation" means a  
9 nonprofit corporation created by a local government for the  
10 purpose of purchasing civil infrastructure assets, renovating  
11 the assets and selling or leasing the assets to a local  
12 government;

13 E. "local authority" means a municipality, county  
14 or water and sanitation district;

15 F. "performance guarantee" means the guaranteed  
16 replacement value or guaranteed condition level of a renovated  
17 civil infrastructure asset;

18 G. "private financing" means a private source of  
19 financing used for the purchase of civil infrastructure assets  
20 by an infrastructure development corporation, with the civil  
21 infrastructure assets being security for debt-financed purchase  
22 and renovation of civil infrastructure assets;

23 H. "renovation cost" means the cost of asset  
24 restoration, upgrading and repair, including the guarantee  
25 costs;

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1 I. "replacement value" means the estimated cost to  
2 a local authority, through the normal procurement process on  
3 the open market, to completely replace civil infrastructure  
4 assets rather than renovate the assets pursuant to the  
5 Infrastructure Renovation and Performance Guarantee Act;

6 J. "sales price" means the replacement value or  
7 lease payments sufficient to service the debt of the  
8 infrastructure development corporation and associated expenses;  
9 and

10 K. "salvage value" means the replacement value less  
11 the renovation cost.

12 Section 4. [NEW MATERIAL] LOCAL AUTHORITIES--ADDITIONAL  
13 POWERS--CREATION OF INFRASTRUCTURE DEVELOPMENT CORPORATION--  
14 POWERS OF CORPORATION.--

15 A. A local authority may create an "infrastructure  
16 development corporation" for the purposes of purchasing and  
17 renovating and selling civil infrastructure assets pursuant to  
18 the provisions of the Infrastructure Renovation and Performance  
19 Guarantee Act.

20 B. An infrastructure development corporation shall  
21 be governed by a board of directors with the number of members  
22 and the method of appointment determined by the local  
23 authority.

24 C. The board of directors shall adopt bylaws, in  
25 accordance with the provisions of the Nonprofit Corporation

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1 Act, governing the conduct of the corporation in the  
2 performance of its duties under the Infrastructure Renovation  
3 and Performance Guarantee Act.

4 D. The board of directors may hire a president who  
5 shall be the chief administrative officer of the corporation  
6 and who shall be responsible for its operations.

7 E. An infrastructure development corporation shall  
8 have the powers conferred upon domestic nonprofit corporations  
9 by the Nonprofit Corporation Act unless otherwise specified in  
10 the Infrastructure Renovation and Performance Guarantee Act and  
11 may:

12 (1) sue and be sued in its corporate name;

13 (2) purchase, take, receive or otherwise  
14 acquire, own, hold, renovate, sell, lease or use civil  
15 infrastructure assets pursuant to the provisions of the  
16 Infrastructure Renovation and Performance Guarantee Act;

17 (3) make and execute all contracts, agreements  
18 or instruments necessary or convenient in the exercise of the  
19 powers and functions granted the corporation by the  
20 Infrastructure Renovation and Performance Guarantee Act and the  
21 local authority;

22 (4) receive and administer grants, contracts  
23 and private gifts;

24 (5) invest and reinvest its funds;

25 (6) conduct its activities, carry on its

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1 operations, have offices and exercise the powers granted by the  
2 Infrastructure Renovation and Performance Guarantee Act and the  
3 local authority;

4 (7) employ officers and employees that it  
5 deems necessary, set their compensation and prescribe their  
6 duties;

7 (8) enter into contracts with private  
8 businesses or persons for the purpose of financing the purchase  
9 of an eligible civil infrastructure asset, evaluating the  
10 condition of the infrastructure asset and guaranteeing the  
11 performance of the restored asset;

12 (9) enter into debt agreements required to  
13 obtain asset-based private financing for the purchase and costs  
14 of renovating infrastructure and fixed assets;

15 (10) seek to purchase eligible civil  
16 infrastructure assets and cause to have civil infrastructure  
17 assets restored in such a manner and under such terms as may  
18 effectuate private financing at tax-exempt rates;

19 (11) establish procedures for making progress  
20 payments to contractors and vendors that carry out renovations  
21 to civil infrastructure assets;

22 (12) provide a first right of refusal to a  
23 local authority for the purchase of renovated assets pursuant  
24 to the Infrastructure Renovation and Performance Guarantee Act;

25 (13) agree to an annually renewable lease of

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1 renovated assets to a local authority in the event that the  
2 local authority does not exercise its first right of refusal;  
3 and

4 (14) enter into and deliver such other  
5 agreements and instruments as are necessary or convenient to  
6 the accomplishment of the purposes of the Infrastructure  
7 Renovation and Performance Guarantee Act.

8 Section 5. [NEW MATERIAL] RENOVATION OF CIVIL  
9 INFRASTRUCTURE ASSETS.--

10 A. Without a referendum, a local authority may sell  
11 civil infrastructure assets for the purpose of renovation,  
12 upgrading or repairing, when the asset renovation and other  
13 costs are less than the estimated replacement value and may  
14 purchase the civil infrastructure assets after renovation. The  
15 Infrastructure Renovation and Performance Guarantee Act  
16 constitutes complete authority for local authorities to sell  
17 such assets and to purchase such renovated assets,  
18 notwithstanding the provisions of any other law otherwise  
19 applicable to the sale or purchase of assets of a local  
20 authority.

21 B. A local authority may enter into agreements with  
22 an infrastructure development corporation that provide for the  
23 sale by a local authority to an infrastructure development  
24 corporation, at salvage value, deteriorated eligible civil  
25 infrastructure assets for the purpose of the infrastructure

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1 development corporation's restoration, upgrading and repair of  
2 civil infrastructure assets with asset-backed private financing  
3 when:

4 (1) the infrastructure development corporation  
5 has entered into an agreement with the local authority to  
6 renovate the assets and has granted a right of first refusal to  
7 the local authority to purchase the assets from the corporation  
8 at a price not to exceed the sum of the salvage value amount,  
9 renovation costs and guarantee and financing costs;

10 (2) the agreement provides for the assets to  
11 continue to be operated by the local authority as a public  
12 asset of the local authority during the period in which the  
13 assets are being renovated;

14 (3) the value and performance of the renovated  
15 civil infrastructure assets are guaranteed by private persons;

16 (4) the local authority determines that it is  
17 the most cost-effective manner in which to provide adequate  
18 local civil infrastructure assets; and

19 (5) the agreement provides that, if the local  
20 authority does not exercise its right of first refusal to  
21 purchase the renovated civil infrastructure assets, the local  
22 authority may enter into an annually renewable lease of the  
23 assets.

24 Section 6. [NEW MATERIAL] CUMULATIVE AUTHORITY.--The  
25 Infrastructure Renovation and Performance Guarantee Act shall

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1 be deemed to provide an additional and alternative business  
2 method for the financing of civil infrastructure assets  
3 renovation by local authorities that may also provide local  
4 authorities financial flexibility, deferral of rate increases  
5 and compliance with governmental accounting standards relative  
6 to asset management and determination of asset values. The  
7 Infrastructure Renovation and Performance Guarantee Act shall  
8 be interpreted as supplemental and additional to the powers  
9 conferred by other laws and shall not be regarded as in  
10 derogation of any powers now existing.

11 Section 7. Section 6-21-3 NMSA 1978 (being Laws 1992,  
12 Chapter 61, Section 3, as amended) is amended to read:

13 "6-21-3. DEFINITIONS.--As used in the New Mexico Finance  
14 Authority Act:

15 A. "authority" means the New Mexico finance  
16 authority;

17 B. "bond" means any bonds, notes, certificates of  
18 participation or other evidence of indebtedness;

19 C. "bondholder" or "holder" means a person who is  
20 the owner of a bond, whether registered or not;

21 D. "emergency public project" means a public  
22 project:

23 (1) made necessary by an unforeseen occurrence  
24 or circumstance threatening the public health, safety or  
25 welfare; and

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1 (2) requiring the immediate expenditure of  
2 money that is not within the available financial resources of  
3 the qualified entity as determined by the authority;

4 E. "public project" means the acquisition,  
5 construction, improvement, alteration or reconstruction of  
6 assets of a long-term capital nature by a qualified entity,  
7 including land; buildings; water rights; water, sewerage and  
8 waste disposal systems; streets; airports; municipal utilities;  
9 parking facilities; and machinery, furniture and equipment.

10 "Public project" includes all proposed expenditures related to  
11 the entire undertaking. "Public project" also includes the  
12 acquisition, construction or improvement of real property,  
13 buildings, facilities and other assets by the authority for the  
14 purpose of leasing the property;

15 F. "qualified entity" means the state or an agency  
16 or institution of the state or a county, municipality, school  
17 district, two-year public post-secondary educational  
18 institution, land grant corporation, acequia association,  
19 public improvement district, federally chartered college  
20 located in New Mexico, intercommunity water or natural gas  
21 supply association or corporation, infrastructure development  
22 corporation created pursuant to the Infrastructure Renovation  
23 and Performance Guarantee Act, special district or community  
24 water association or an Indian nation, tribe or pueblo located  
25 wholly or partially in New Mexico, including a political

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1 subdivision or a wholly owned enterprise of an Indian nation,  
2 tribe or pueblo or a consortium of those Indian entities; and

3 G. "security" or "securities", unless the context  
4 indicates otherwise, means bonds, notes or other evidence of  
5 indebtedness issued by a qualified entity or leases or  
6 certificates or other evidence of participation in the lessor's  
7 interest in and rights under a lease with a qualified entity  
8 and that are payable from taxes, revenues, rates, charges,  
9 assessments or user fees or from the proceeds of funding or  
10 refunding bonds, notes or other evidence of indebtedness of a  
11 qualified entity or from certificates or evidence of  
12 participation in a lease with a qualified entity."

13 Section 8. Section 13-1-98 NMSA 1978 (being Laws 1984,  
14 Chapter 65, Section 71, as amended by Laws 2001, Chapter 291,  
15 Section 8 and by Laws 2001, Chapter 292, Section 3 and by Laws  
16 2001, Chapter 305, Section 28 and also by Laws 2001, Chapter  
17 312, Section 13) is amended to read:

18 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The  
19 provisions of the Procurement Code shall not apply to:

20 A. procurement of items of tangible personal  
21 property or services by a state agency or a local public body  
22 from a state agency, a local public body or external  
23 procurement unit except as otherwise provided in Sections  
24 13-1-135 through 13-1-137 NMSA 1978;

25 B. procurement of tangible personal property or  
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1 services for the governor's mansion and grounds;

2 C. printing and duplicating contracts involving  
3 materials that are required to be filed in connection with  
4 proceedings before administrative agencies or state or federal  
5 courts;

6 D. purchases of publicly provided or publicly  
7 regulated gas, electricity, water, sewer and refuse collection  
8 services;

9 E. purchases of books and periodicals from the  
10 publishers or copyright holders thereof;

11 F. travel or shipping by common carrier or by  
12 private conveyance or to meals and lodging;

13 G. purchase of livestock at auction rings or to the  
14 procurement of animals to be used for research and  
15 experimentation or exhibit;

16 H. contracts with businesses for public school  
17 transportation services;

18 I. procurement of tangible personal property or  
19 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,  
20 by the corrections industries division of the corrections  
21 department pursuant to regulations adopted by the corrections  
22 commission, which shall be reviewed by the purchasing division  
23 of the general services department prior to adoption;

24 J. minor purchases not exceeding five thousand  
25 dollars (\$5,000) consisting of magazine subscriptions,

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1 conference registration fees and other similar purchases where  
2 prepayments are required;

3 K. municipalities having adopted home rule charters  
4 and having enacted their own purchasing ordinances;

5 L. the issuance, sale and delivery of public  
6 securities pursuant to the applicable authorizing statute, with  
7 the exception of bond attorneys and general financial  
8 consultants;

9 M. contracts entered into by a local public body  
10 with a private independent contractor for the operation, or  
11 provision and operation, of a jail pursuant to Sections 33-3-26  
12 and 33-3-27 NMSA 1978;

13 N. contracts for maintenance of grounds and  
14 facilities at highway rest stops and other employment  
15 opportunities, excluding those intended for the direct care and  
16 support of persons with handicaps, entered into by state  
17 agencies with private, nonprofit, independent contractors who  
18 provide services to persons with handicaps;

19 O. contracts and expenditures for services or items  
20 of tangible personal property to be paid or compensated by  
21 money or other property transferred to New Mexico law  
22 enforcement agencies by the United States department of justice  
23 drug enforcement administration;

24 P. contracts for retirement and other benefits  
25 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

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1 Q. contracts with professional entertainers;

2 R. contracts and expenditures for litigation  
3 expenses in connection with proceedings before administrative  
4 agencies or state or federal courts, including experts,  
5 mediators, court reporters, process servers and witness fees,  
6 but not including attorney contracts; [~~and~~]

7 S. contracts for service relating to the design,  
8 engineering, financing, construction and acquisition of public  
9 improvements undertaken in improvement districts pursuant to  
10 Subsection L of Section 3-33-14.1 NMSA 1978 and in county  
11 improvement districts pursuant to Subsection L of Section  
12 4-55A-12.1 NMSA 1978;

13 T. works of art for museums or for display in  
14 public buildings or places;

15 U. contracts entered into by a local public body  
16 with a person, firm, organization, corporation, association or  
17 a state educational institution named in Article 12, Section 11  
18 of the constitution of New Mexico for the operation and  
19 maintenance of a hospital pursuant to Chapter 3, Article 44  
20 NMSA 1978, for the lease or operation of a county hospital  
21 pursuant to the Hospital Funding Act or for the operation and  
22 maintenance of a hospital pursuant to the Special Hospital  
23 District Act; and

24 V. the purchase of civil infrastructure assets by a  
25 local authority pursuant to the Infrastructure Renovation and

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1 Performance Guarantee Act."

2 Section 9. Section 13-6-2 NMSA 1978 (being Laws 1979,  
3 Chapter 195, Section 3, as amended by Laws 2003, Chapter 203,  
4 Section 1 and by Laws 2003, Chapter 349, Section 21) is amended  
5 to read:

6 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL  
7 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--  
8 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

9 A. Providing a written determination has been made,  
10 a state agency, local public body, school district or state  
11 educational institution may sell or otherwise dispose of real  
12 or tangible personal property belonging to the state agency,  
13 local public body, school district or state educational  
14 institution. Disposal of real or tangible personal property  
15 under this section shall be by negotiated sale or donation to  
16 an Indian nation, tribe or pueblo in New Mexico or by  
17 negotiated sale or donation to other state agencies, local  
18 public bodies, school districts or state educational  
19 institutions or through the central purchasing office of the  
20 governmental entity by means of competitive sealed bids or  
21 public auction or, if a state agency, through the federal  
22 property assistance bureau of the general services department.

23 B. A state agency, local public body, school  
24 district or state educational institution may sell or otherwise  
25 dispose of real property:

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1                   (1) by negotiated sale or donation to an  
2 Indian nation, tribe or pueblo located wholly or partially in  
3 New Mexico, or to a governmental unit of an Indian nation,  
4 tribe or pueblo in New Mexico, that is authorized to purchase  
5 land and control activities on its land by an act of congress  
6 or to purchase land on behalf of the Indian nation, tribe or  
7 pueblo;

8                   (2) by negotiated sale or donation to other  
9 state agencies, local public bodies, school districts or state  
10 educational institutions; or

11                   (3) through the central purchasing office of  
12 the state agency, local public body, school district or state  
13 educational institution by means of competitive sealed bid,  
14 public auction or negotiated sale to a private person.

15                   C. Disposal of tangible personal property under  
16 this section shall be:

17                   (1) by negotiated sale or donation to an  
18 Indian nation, tribe or pueblo in New Mexico;

19                   (2) by negotiated sale or donation to other  
20 state agencies, local public bodies, school districts or state  
21 educational institutions;

22                   (3) through the central purchasing office of  
23 the governmental entity by means of competitive sealed bids,  
24 negotiated sale or public auction; or

25                   (4) if a state agency, through the federal

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1 property assistance bureau of the general services department.

2           ~~[B.]~~ D. A state agency shall give the federal  
3 property assistance bureau of the general services department  
4 the right of first refusal to dispose of tangible personal  
5 property of the state agency. A school district may give the  
6 department the right of first refusal to dispose of tangible  
7 personal property of the school district.

8           ~~[C.]~~ E. Except as provided in Section 13-6-2.1 NMSA  
9 1978 requiring state board of finance approval for certain  
10 transactions, sale or disposition of real or tangible personal  
11 property having a current resale value of more than five  
12 thousand dollars (\$5,000) may be made by a state agency, local  
13 public body, school district or state educational institution  
14 if the sale or disposition has been approved by the state  
15 budget division of the department of finance and administration  
16 for state agencies, the local government division of the  
17 department of finance and administration for local public  
18 bodies, the ~~[state department of]~~ public education department  
19 for school districts and the commission on higher education for  
20 state educational institutions.

21           ~~[D.]~~ F. Prior approval of the appropriate approval  
22 authority is not required if the property is to be used as a  
23 trade-in or exchange pursuant to the provisions of the  
24 Procurement Code.

25           ~~[E.]~~ G. The appropriate approval authority may

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1 condition the approval of the sale or other disposition of real  
2 or tangible personal property upon the property being offered  
3 for sale or donation to a state agency, local public body,  
4 school district or state educational institution.

5 ~~[F-]~~ H. The appropriate approval authority may  
6 credit a payment received from the sale of such real or  
7 tangible personal property to the governmental body making the  
8 sale. The state agency, local public body, school district or  
9 state educational institution may convey all or any interest in  
10 the real or tangible personal property without warranty.

11 ~~[G-]~~ I. This section shall not apply to:

- 12 (1) computer software of a state agency;
- 13 (2) those institutions specifically enumerated  
14 in Article 12, Section 11 of the constitution of New Mexico;
- 15 (3) the New Mexico state police division of  
16 the department of public safety;
- 17 (4) the state land office or the ~~[state~~  
18 ~~highway and]~~ department of transportation ~~[department]~~;
- 19 (5) property acquired by a museum through  
20 abandonment procedures pursuant to the Abandoned Cultural  
21 Properties Act;
- 22 (6) leases of county hospitals with any person  
23 pursuant to the Hospital Funding Act; ~~[and]~~
- 24 (7) property acquired by the economic  
25 development department pursuant to the Statewide Economic

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1 Development Finance Act; and  
2 (8) civil infrastructure assets sold by a  
3 local authority pursuant to the Infrastructure Renovation and  
4 Performance Guarantee Act."

5 Section 10. Section 13-6-2.1 NMSA 1978 (being Laws 1989,  
6 Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,  
7 Section 3 and by Laws 2003, Chapter 349, Section 22) is amended  
8 to read:

9 "13-6-2.1. SALES, TRADES OR LEASES--BOARD OF FINANCE  
10 APPROVAL.--

11 A. Except as provided in Section 13-6-3 NMSA 1978,  
12 for state agencies, any sale, trade or lease for a period of  
13 more than five years of real property belonging to a state  
14 agency, local public body or school district or any sale, trade  
15 or lease of such real property for a consideration of more than  
16 twenty-five thousand dollars (\$25,000) shall not be valid  
17 unless it is approved prior to its effective date by the state  
18 board of finance.

19 B. The provisions of this section shall not be  
20 applicable as to:

- 21 (1) those institutions specifically enumerated
- 22 in Article 12, Section 11 of the constitution of New Mexico;
- 23 (2) the state land office;
- 24 (3) the state transportation commission; [~~or~~]
- 25 (4) the economic development department when

1 disposing of property acquired pursuant to the Statewide  
2 Economic Development Finance Act; or  
3 (5) a local authority selling civil  
4 infrastructure assets pursuant to the Infrastructure Renovation  
5 and Performance Guarantee Act."

6 Section 11. LIBERAL INTERPRETATION.--The Infrastructure  
7 Renovation and Performance Guarantee Act, being necessary for  
8 the welfare of the state and its inhabitants, shall be  
9 liberally construed to effect the purposes thereof.

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